

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

JULIA BALTA and MARJORIE BALTA,

Plaintiff

DECISION AND ORDER

-vs-

04-CV-6164 CJS

THE AYCO COMPANY, LP, a Delaware  
Partnership, and JEFFREY KONYA,

Defendants

---

JAMES BALTA,

Plaintiff

04-CV-6165 CJS

-vs-

THE AYCO COMPANY, LP, a Delaware  
Partnership, and JEFFREY KONYA,

Defendants

---

APPEARANCES

For plaintiffs Julia Balta and  
Marjorie Balta:

K. Wade Eaton, Esq.  
Chamberlain D'Amanda Oppenheimer  
& Greenfield, LLP  
1600 Crossroads Building  
Rochester, New York 14614

For plaintiff James Balta:

Mitchell T. Williams, Esq.  
Williams & Williams  
28 E. Main Street, Suite 600  
Rochester, New York 14614

For defendant The Ayco  
Company, LP:

Thomas E. Reidy, Esq.  
Michael D. Norris, Esq.  
Amy Levine Fici, Esq.  
Ward, Norris, Heller & Reidy, LLP  
300 State Street, 6th Floor  
Rochester, New York 14614

For defendant Jeffrey  
Konya:

Steven E. Cole, Esq.  
Leclair Korona Giordano Cole LLP  
150 State Street, Suite 300  
Rochester, New York 14614

## INTRODUCTION

Plaintiffs in this diversity action are suing their former financial advisors for money damages that they sustained following a series losses in the stock market. Now before the Court are Ayco Company, LP's motion for partial summary judgment [#54] on Plaintiff's claim for punitive damages,<sup>1</sup> and Jeffrey Konya's motion to dismiss and/or for summary judgment [#61]. For the reasons that follow, both applications are granted.

## BACKGROUND

For purposes of the instant Decision and Order, it is sufficient to note the following facts, which are viewed in the light most favorable to Plaintiffs. At all relevant times, plaintiff Marjorie Balta and her two adult children, Julia Balta and James Balta ("James"), collectively owned over \$4 million in assets, of which James was the de facto trustee. At all relevant times, defendant The Ayco Company, LP ("Ayco") was a firm that provided investment advisory services. Defendant Jeffrey Konya ("Konya") was employed by Ayco.

James and Konya were friends and former high-school classmates. In the Fall of 1998, Konya suggested that James retain Ayco to provide advice on investments, estate planning and other financial matters, and James eventually did so. Konya was employed

---

<sup>1</sup> Ayco has also moved for summary judgment on a number of additional grounds. The parties are presently exploring a resolution of the remaining claims in this action. In the event those efforts do not result in a settlement, the Court will issue a Decision and Order addressing the remaining aspects of Ayco's motion.

as a staff attorney at Ayco, and was not an investment advisor. Nevertheless, according to Plaintiffs, Konya provided investment advice to James which resulted in significant financial losses to Plaintiffs. In this action, Plaintiffs have asserted claims for breach of contract, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, and constructive fraud.

Konya has moved for dismissal and/or summary judgment on all claims. Additionally, Ayco has moved for summary judgment on Plaintiff's demand for punitive damages. Plaintiffs' responsive papers do not directly address Konya's motion, or Ayco's arguments concerning punitive damages. On April 4, 2008, counsel for the parties appeared before the undersigned for oral argument of the motions. At that time, Plaintiffs' counsel did not articulate any basis to deny Konya's motion, or Ayco's motion insofar as it pertains to punitive damages.

#### CONCLUSION

Accordingly, Ayco Company, LP's motion for partial summary judgment [#54] is granted solely as to Plaintiff's claims for punitive damages. As noted above, the Court will address the remainder of Ayco's motion at a later time, if necessary. Additionally, Jeffrey Konya's motion to dismiss and/or for summary judgment [#61] is granted in its entirety, and the Clerk of the Court is directed to terminate Konya as a party to this action.

Dated:           Rochester, New York  
                  April 14, 2008

ENTER:

/s/ Charles J. Siragusa  
CHARLES J. SIRAGUSA  
United States District Judge